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No. ———

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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Dated: September 10, 1982

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Does an employer which provides health insurance benefits for employees and their dependents discriminate against male employees in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978, by providing only limited coverage for pregnancy-related expenses incurred by male employees' wives? *

PARTIES

Petitioner, Newport News Shipbuilding and Dry Dock Company, and Respondent, the Equal Employment Opportunity Commission, were the only parties to the proceedings before the United States Court of Appeals for the Fourth Circuit.** Newport News Shipbuilding and Dry Dock Company, a corporation, is a wholly-owned subsidiary of Tenneco Corporation, which is a subsidiary of Tenneco, Inc.

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* Subsidiary questions are:

(1) In enacting the Pregnancy Discrimination Act, did Congress overturn the rationale, as well as the holding, of this Court's decision in General Electric Co. v. Gilbert?

(2) In enacting the Pregnancy Discrimination Act, did Congress make it unlawful under Title VII for an employer to make *any* distinctions based on pregnancy, childbirth, or related medical conditions even if such distinctions are not prohibited by the sex discrimination bans found in Sections 703(a) and 704 of Title VII?

** The Chamber of Commerce of the United States and the Equal Employment Advisory Council also participated in the Fourth Circuit proceedings as *Amici Curiae* urging affirmance of the decision of the district court. The United Steelworkers of America, AFL-CIO-CLC, and John McNulty, both of whom were Defendants in Civil Action No. 80-20-NN, one of the two cases consolidated before the Fourth Circuit, did not participate in the Fourth Circuit proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Newport News Shipbuilding and Dry Dock Company [hereinafter, "the Shipyard"], an employer subject to the provisions of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e, *et seq.*, respectfully prays that a writ of certiorari issue to review an *en banc* decision of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's final opinion, which is a one paragraph *per curiam* opinion issued after rehearing *en banc*,

is unreported and is reproduced herein as Appendix A. The Fourth Circuit's *per curiam* opinion adopted the rationale set forth in the panel opinion, which is reported at 667 F.2d 448 and is reproduced herein as Appendix B. The amended opinion and order of the district court in Civil Action No. 80-20-NN is reported at 510 F. Supp. 66 and is reproduced herein as Appendix C.[1] The district court's final order in Civil Action No. 80-237-NN, which is unreported, is reproduced herein as Appendix E.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1). The final judgments of the Fourth Circuit, which are reproduced herein as Appendix F and Appendix G, were entered on June 22, 1982. This Petition was filed within ninety days of that date.

STATUTES AND REGULATIONS INVOLVED

Section 701(k) of Title VII:

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated

[1] The district court's initial opinion and order in Civil Action No. 80-20-NN, entered on January 26, 1981, and reported at 24 Fair Empl. Prac. Cases 1363, enjoined the Equal Employment Opportunity Commission ("EEOC") from processing charges of discrimination concerning the Shipyard's health insurance plan and enjoined the United Steelworkers of America, AFL-CIO-CLC [hereinafter, "the Steelworkers"], from processing grievances relating thereto. On timely motions to amend filed by the EEOC and the Steelworkers, the district court struck the injunction against the Steelworkers and limited the injunction against the EEOC to permit it to process charges. The amended opinion and order is identical to the initial opinion and order in all other respects. Accordingly, the district court's initial opinion and order, and its initial judgment, are omitted from the Appendix. The district court's amended judgment is reproduced herein as Appendix D.

the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

42 U.S.C. § 2000e-(k).

Section 703(a) of Title VII:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a).

Section 704 of Title VII:

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or

retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to the classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

42 U.S.C. § 2000e-3.

Subsection 10(b) of the EEOC's Guidelines on Discrimination Because of Sex:

Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance

or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

44 *Fed. Reg.* 23,805 (April 20, 1979), *reprinted in* 29 C.F.R. § 1604.10(b) (1981).[2]

Questions and Answers Nos. 21 and 22:

21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-

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[2] At the time of this Court's decision in General Elec. Co. v. Gilbert, 429 U.S. 125 (1976), *petition for rehearing denied*, 429 U.S. 1079 (1977), this subsection of the Guidelines read as follows:

> Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

39 *Fed. Reg.* 6,836 (April 5, 1972), *reprinted in* 29 C.F.R. § 1604.10(b)(1975).

related conditions of the spouses of male employees? Of all the dependents of all employees?

A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions.

But the insurance does not have to cover the pregnancy-related conditions of non-spouse dependents as long as it excludes the pregnancy-related conditions of such non-spouse dependents of male and female employees equally.

22. Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However, where the employer provides coverage for the medical conditions of the spouses of its employees, then the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100 percent of reasonable and customary expenses sustained for a medical condition, but only covers dependent spouses for 50 percent of reasonable and customary expenses for their medical conditions, the pregnancy-related expenses of the male employee's spouse must be covered at the 50 percent level.

44 *Fed. Reg.* 23,807-08 (April 20, 1979), *reprinted in* 29 C.F.R. Part 1604 (Appendix) (1981).

STATEMENT OF THE CASE

The Shipyard, as a self-insurer, provides a Hospitalization, Medical-Surgical, and Major Medical Plan [herein-

after, "the Plan"] for "all active, full-time, production, maintenance, technical and clerical areas' bargaining unit eligible employees" who have been on the payroll for three continuous months.[3] The Plan, established in 1951, covers eligible employees of both sexes, their spouses, and their unmarried children who are between the ages of 14 days and 19 years.[4] After exhaustion of a $100 per person deductible, the Major Medical component of the Plan provides reimbursement for 80% of the reasonable and customary charges for all covered medical expenses per calendar year, up to a lifetime maximum of $25,000 per person.[5] With specific exclusions and limitations, the Medical-Surgical component of the Plan provides reimbursement for 100% of the reasonable and customary charges for all surgical procedures and the Hospitalization component provides full reimbursement for the cost of a semi-private hospital room, intensive care, or coronary care unit for up to 120 days, and for the reasonable and customary charges for hospital services (including general nursing care, x-ray examinations, and drugs) and other necessary services while hospitalized, up to 100% of the first $750, then 80% of the excess up to 120 days.[6]

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[3] The full text of a booklet describing the principal features of the Plan is reproduced herein as Appendix H.

[4] *See* Appendix at 29a. Coverage is extended to unmarried children over the age of 19 years under certain limited circumstances. *See* Appendix at 30a.

[5] *See* Appendix at 32a-34a.

[6] The Plan provides limited coverage for, *inter alia*, oral surgery, injuries and illnesses treated in a hospital emergency room, mental care when the patient is not hospitalized, and dependents' maternity benefits. *See* Appendix at 37a-39a. By virtue of its "Coordination of Benefits" provisions, the Plan also limits reimbursements for expenses covered by Medicare and limits dependent coverage by providing that expenses incurred by a spouse employed elsewhere are to be paid first by the spouse's group plan, if any. *See* Appendix at 34a-36a, 47a-48a. The Plan totally excludes coverage for, *inter alia*, charges by a psychologist not recommended by and under the

With respect to the maternity benefits available to female employees and the spouses of male employees alike, the Hospitalization component of the Plan historically provided reimbursement for up to 100% of the reasonable and customary charges for delivery and anesthesiologists, and up to $500 of all other hospital charges. After enactment of the Pregnancy Discrimination Act ("PDA"), Pub. L. No. 95-555, 92 Stat. 2076 (October 31, 1978), the Shipyard amended the Hospitalization component of its Plan to provide that, "Effective April 29, 1979, maternity benefits for female employees will be paid the same as any other hospital confinement . . . ."[7] The $500 limitation still applies to the pregnancy-related hospitalization costs incurred by the wives of male employees.[8]

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direction of a psychiatrist, charges covered by Workers' Compensation, charges incurred as a result of an act of violence or riot if the person seeking reimbursement is determined to be the aggressor, charges for well baby care (routine charges made by the hospital and doctor for the care of a normal, healthy newborn), charges for non-prescription drugs and medicines, charges for certain pre-existing conditions, charges for eyeglasses, charges for unnecessary cosmetic surgery, charges for routine physical examinations, and charges for preventative innoculations. *See* Appendix at 31a, 42a-44a.

[7] The PDA became effective on October 31, 1978. It required all fringe benefit programs in effect as of October 31, 1978 to be amended by April 29, 1979. For a period of one year from October 31, 1978, the PDA prohibited any employer which had a fringe benefit plan in effect on October 31, 1978 from reducing benefits or compensation in order to come into compliance with its terms. The full text of the PDA is reproduced herein as Appendix I.

[8] The booklet describing the principal features of the Plan describes the Plan's maternity benefits hospitalization provision as follows:

28. What maternity benefits are provided?

A. The Basic Plan pays up to $500 of the hospital charges and 100% of reasonable and customary for delivery and anesthesiologist charges.

B. Effective April 29, 1979, maternity benefits for female employees will be paid the same as any other hospital

All reasonable and customary pregnancy-related surgical costs, as well as the medical expenses incurred as a result of most complications arising from the pregnancy of a male employee's spouse, are covered by the Medical-Surgical and Major Medical components of the Plan.

On September 20, 1979, John McNulty, a Shipyard employee covered by the Plan, filed a charge with the EEOC, claiming that the Shipyard's Plan unlawfully discriminated against him because of his sex in that it limited to $500 the hospitalization coverage available for his wife's pregnancy. On October 28, 1979, the Steelworkers filed a similar charge against the Shipyard on behalf of other individuals.[9] The allegations of these charges found support in the EEOC's Guidelines on Discrimination Because of Sex [hereinafter, "EEOC Guidelines"] as set forth at 29 C.F.R. Part 1604 (Appendix) in Questions and Answers Nos. 21 and 22.

In response to these charges, and to the EEOC's position with respect to them, the Shipyard filed a complaint in district court seeking a declaratory judgment that Questions and Anwers Nos. 21 and 22 of the EEOC Guidelines were *ultra vires* the statute, as well as arbitrary, capricious, an abuse of discretion, and otherwise contrary to law. The Shipyard's complaint also sought an order permanently enjoining the EEOC from enforcing these Guidelines and an order requiring the EEOC to publish a

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confinement as described in Question 16. This applies only to deliveries beginning on April 29, 1979 and thereafter.

C. Maternity benefits for the wife of a male employee will continue to be paid as described in part "A" of this question.

Appendix at 37a.

[9] The Steelworkers, a labor organization, is the collective bargaining representative of the Shipyard's production and maintenance employees.

notice in the *Federal Register* declaring that Guidelines Nos. 21 and 22 are null and void.[10]

On December 15, 1980, the EEOC filed a complaint against the Shipyard in the same court.[11] The EEOC's complaint alleged that the Shipyard violated Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), in that it did not reimburse male employees for expenses related to their wives' pregnancies to the same extent that it reimbursed female employees for expenses related to their husbands' disabilities. The EEOC's complaint sought an order enjoining the Shipyard from engaging in any employment practices which discriminate because of sex, an order requiring the Shipyard to provide equal compensation to its male employees in the future, monetary relief for those allegedly discriminated against by operation of the Plan, and other affirmative relief designed to eradicate the effects of the alleged discrimination.

In granting the Shipyard's motion for summary judgment in the first case, the district court held that the Shipyard's Plan was not discriminatory on its face and that, there was no showing that the Plan, by limiting reimbursements for the pregnancy-related expenses of spouses of male employees, has caused any gender-based effect in violation of Section 703(a)(1) of Title VII, 42

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[10] Jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. §§ 2201-02 (Declaratory Judgment), and 5 U.S.C. §§ 701-06 (Administrative Procedure Act). The Defendants in this action were the EEOC, the Steelworkers, and McNulty. The latter two Defendants were included pursuant to Rule 19(a)(2) of the Federal Rules of Civil Procedure. The district court found that it had jurisdiction of this matter pursuant to 28 U.S.C. §§ 2201-02. 510 F. Supp. at 71 (Appendix at 17a).

[11] The EEOC invoked the district court's jurisdiction pursuant to 28 U.S.C. § 451, 28 U.S.C. § 1343 (civil rights), and 28 U.S.C. § 1345 (United States as plaintiff), as well as 42 U.S.C. § 2000e-5 (f)(1) and (3) (Title VII).

U.S.C. § 2000e-2(a)(1). 510 F. Supp. at 71 (Appendix at 16a-17a). It also declared that Questions and Answers Nos. 21 and 22 of the EEOC Guidelines are contrary to law and are of no force and effect and that McNulty is entitled to no benefits under Title VII which were not already provided to him under the Plan. *Id.* In so holding, the district court noted that the PDA changed the law only with respect to *female* employees and applicants for employment and that the legislative history of the PDA states explicitly that the issue of dependents' benefits would have to be resolved using "the existing principles of Title VII." 510 F. Supp. at 70 (Appendix at 15a-16a). According to the district court, "the existing principles of Title VII" with respect to McNulty's claim, and all others involving neither female employees nor applicants for employment, are set forth in this Court's decision in *General Electric Co. v. Gilbert.* 510 F. Supp. at 71 (Appendix at 16a). For the reasons stated in its decision in the declaratory judgment case, the district court subsequently granted the Shipyard's motion to dismiss the EEOC's complaint in the Title VII case for failure to state a claim upon which relief could be granted. Appendix at 21a.

A panel of the Fourth Circuit, having consolidated the two cases, reversed the district court's decisions. In an opinion authored by Senior Circuit Judge Haynsworth, the panel majority found that the language of the PDA, as well as the legislative history of that Act, supported the EEOC's position that the Shipyard's Plan, on its face, unlawfully discriminated against male employees. 667 F.2d at 450-51 (Appendix at 4a-7a). It also concluded that even if Congress intended to leave this question open, this Court's decision in *Gilbert* did not apply because the PDA overturned the rationale of that decision as well as its holding. 667 F.2d at 451 (Appendix at 7a). The panel's conclusion is as follows:

> We cannot read the [PDA] . . . so narrowly as to overturn the specific holding in *Gilbert* without affecting the reasoning upon which that holding was based. The language of the new statute strongly indicates a purpose to equate pregnancy, childbirth and related medical conditions with sex. Distinctions based on pregnancy, the Congress said, are distinctions based on sex.
>
> Since the company's health insurance plan contains a distinction based on pregnancy that results in less complete medical coverage for male employees with spouses than for female employees with spouses, it is impermissible under the statute.

Id.

Circuit Judge Hall dissented from the majority opinion of the panel. In his opinion:

> Regardless of one's personal feelings on the matter, pregnancy-based classifications are lawful except to the extent that *General Electric v. Gilbert* . . . has been limited by the Act. Had Congress intended to completely eviscerate *Gilbert*, it could have easily done so without references to a woman's ability or inability to work.

667 F.2d at 452 (Hall, C.J., dissenting) (citation omitted) (Appendix at 8a).

After granting the Shipyard's motion for rehearing *en banc*, a majority of the Fourth Circuit—Judges Butzner, Phillips, Murnaghan, Sprouse, and Ervin—agreed with Judge Haynsworth's opinion. Appendix at 1a. Judges Widener, Hall, and Chapman dissented for the reasons set forth in Judge Hall's dissent to the panel opinion. *Id.*

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW IS IN DIRECT CONFLICT WITH THE ONLY OTHER CIRCUIT COURT DECISION ADDRESSING THE QUESTION PRESENTED FOR REVIEW.

In concluding that the Shipyard's Plan unlawfully discriminates against male employees in violation of Title VII because it provides only limited benefits for the pregnancy-related hospital costs of the wives of male employees, the court below found that Congress intended the PDA to make it unlawful for an employer to make any distinctions based on pregnancy or related medical conditions, even if the person suffering from such a condition is not an employee. It also held that although Congress may have intended the question of coverage of dependents' pregnancy-related benefits to be controlled not by the PDA, but by basic principles of Title VII, this Court's decision in *Gilbert* was not such a "principle" since it had been overturned by enactment of the PDA. The court below based these conclusions on the language of the PDA and a review of the legislative history of that Act.

Two weeks after the court below issued its *en banc* decision, the Ninth Circuit isued a decision in *EEOC v. Lockheed Missiles & Space Co.*, 680 F.2d 1243 (9th Cir.), *petition for rehearing filed*, No. 81-4542 (July 27, 1982), holding that an employer's health insurance plan which covers dependents, but which totally excludes coverage for the pregnancy-related expenses of the wives of male employees, does *not* discriminate against male employees in violation of Title VII, as amended by the PDA. The Ninth Circuit held that Congress intended the PDA to do "no more than provide that an exception to Title VII's basic principles was to apply in the case of women employees" and that the question of coverage of dependents' pregnancy-rated benefits is controlled by Title VII's basic principles, including those set forth in *Gilbert*. 680

F.2d at 1246.[12] This conclusion, like the conclusion of the court below, is based on an analysis of the language of the PDA and a review of its legislative history.

The existence of these conflicting decisions raises substantial questions about the continued validity of this Court's *Gilbert* decision and about the requirements of Title VII, as amended by the PDA.[13] As the law now stands, health insurance plans such as the Shipyard's Plan are lawful in the Ninth Circuit, but unlawful in the Fourth Circuit. The purpose of a federal law is to establish uniform federal standards; uniformity is particularly important with respect to Title VII because it impacts on employees of both large and small employers nationwide.[14] Because of the conflicting decisions on the

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[12] Judge Wright, specially concurring in *Lockheed*, concluded that that question was resolved neither by *Gilbert* nor by the PDA, but that Lockheed's health insurance plan must be upheld under other principles of Title VII. 680 F.2d at 1247 (Wright, J., specially concurring).

[13] The decision of the court below also conflicts directly with the decisions of all but one of the district courts which have confronted this issue. *See* EEOC v. Joslyn Mfg. & Supply Co., 524 F. Supp. 1141 (N.D. Ill. 1981), *appeal docketed*, No. 82-1634 (7th Cir. April 14, 1982); EEOC v. Emerson Elec. Co., 539 F. Supp. 153 (E.D. Mo.), *appeal docketed*, No. 82-1647 (8th Cir. May 27, 1982). *See also* EEOC v. Lockheed Missiles & Space Co., 27 Fair Empl. Prac. Cases 1209 (N.D. Cal. 1981), *aff'd*, 680 F.2d 1243 (9th Cir.), *petition for rehearing filed*, No. 81-4542 (July 27, 1982); Newport News Shipbuilding and Dry Dock Co. v. EEOC, 510 F. Supp. 66 (E.D. Va. 1981), *rev'd*, 667 F.2d 448 (4th Cir.), *aff'd on rehearing en banc per curiam*, —— F.2d —— (1982) (this case). Counsel for Petitioner are aware of only one district court decision which reaches the same conclusion as the opinion at issue in this Petition. This decision, United Teachers—Los Angeles v. Bd. of Educ., 29 Empl. Prac. Dec. ¶ 32,759 (C.D. Cal.), *appeal docketed*, No. 82-5360 (9th Cir. March 12, 1982), has been effectively nullified by the Ninth Circuit's holding in *Lockheed*.

[14] In general, Title VII applies to all persons engaged in an industry affecting commerce who have fifteen or more employees. *See* 42 U.S.C. § 2000e-(b). As is apparent from the case citations in

question presented herein, employers doing business in the geographical areas covered by the Fourth and Ninth Circuits are subject to different directives with respect to their obligations to provide pregnancy-related health insurance benefits for the wives of their male employees. The Shipyard respectfully submits that this Court should grant the instant Petition in order to resolve this conflict and thus to give direction to the Seventh and Eighth Circuits, which now face the precise question presented for review.[15]

II. THE DECISION OF THE COURT BELOW IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN *GENERAL ELECTRIC CO. v. GILBERT.*

Gilbert involved the question of an employer's Title VII obligations with respect to providing benefits to employees for pregnancy-related disabilities. Although *Gilbert* did not directly address an employer's Title VII obligations with respect to the provision of disability benefits to employees' dependents, the rationale of *Gilbert* applies to dependents as well as employees—if it was lawful under Title VII, before enactment of the PDA, to exclude benefits for the pregnancy-related disabilities of employees, and if the PDA changed Title VII only with respect to female employees and applicants for employment, it is now lawful, under the rationale of *Gilbert*, to exclude or limit benefits for the pregnancy-related disabilities of employees' dependents. *See Lockheed, supra*, 680 F.2d at 1247; *EEOC v. Joslyn Manufacturing & Supply Co., supra*, 524 F. Supp. at 1143; *EEOC v. Emerson Electric Co., supra*, 539 F. Supp. at 158-59. Therefore, the instant Petition should be granted because the

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the previous footnote, employers in all parts of the country have health insurance plans with maternity benefits provisions similar to those in the Shipyard's Plan.

[15] *See* EEOC v. Joslyn Mfg. & Supply Co., *supra*; EEOC v. Emerson Elec. Co., *supra*.

opinion of the court below decides a federal question in a way which is directly contrary to this Court's opinion in *Gilbert* and which renders suspect the rationale of that case and other decisions of this Court which have adhered to its rationale.[16]

III. THE COURT BELOW INCORRECTLY DECIDED AN IMPORTANT ISSUE OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The opinion of the court below, like this Court's opinion in *Gilbert*, is of obvious importance to employers and employees nationwide.[17] This Court has not yet had occasion to address the impact of the PDA on an employer's Title VII obligations with respect to health insurance plans or on *Gilbert*, itself. The Shipyard submits that the litigants and the lower courts need the prompt assistance of this Court in answering this important question of statutory construction.

The court below found that the language of the PDA is "tortured" if construed to extend benefits only to female employees and applicants for employment. 667 F.2d at 450. According to that court:

> [The] coverage of spouses is employment-related and the statutory reference to the receipt of fringe benefits contains no intimation that benefits payable with respect to the disability of a spouse are excluded from the statute's reach. The statutory reference to "ability or inability to work" denotes disability and does not suggest that the spouse must be an employee of the employer providing the coverage. In fact, the statute says "as other persons not so affected"; it does not say "as other *employees* not so affected."

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[16] The rationale of *Gilbert* has been relied upon by this Court in analyzing the lawfulness of employee benefit plans in Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1978), and Nashville Gas Co. v. Satty, 434 U.S. 136 (1977).

[17] *See* n.14, *supra*.

667 F.2d at 450-51 (emphasis in original). Noting that the Senate Committee Report on S. 995, the bill which eventually became the PDA, indicated that the PDA did not address the question of medical coverage for the dependents of employees, the court below acknowledged that the PDA itself might not control this case. 667 F.2d at 451. It nevertheless concluded that the Shipyard violated Title VII because its Plan "contains a distinction based on pregnancy that results in less complete medical coverage for male employees with spouses than for female employees with spouses" and because the PDA overturned the reasoning of *Gilbert*, as well as its specific holding. At no point did the court below explain why the Shipyard's Plan is unlawful if neither *Gilbert* nor the PDA answers the question presented for review. Nor did it explain whether it found the Plan to violate Section 703(a)(1) or Section 703(a)(2) of Title VII.[18] In fact,

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[18] This Court has indicated that questions about the lawfulness of employee benefit plans under Title VII should be analyzed under Section 703(a)(1). *See* Nashville Gas Co. v. Satty, *supra*, 434 U.S. at 140-43 (1977). *See also* Los Angeles Dep't of Water & Power v. Manhart, *supra*.

As explained in *Manhart*, an employment practice is facially discriminatory under Section 703(a)(1) if it divides employees into two groups, each of which is "composed entirely and exclusively of members of the same sex." 435 U.S. at 715. For purposes of reimbursements for hospitalization costs incurred by dependents, the Shipyard's Plan divides employees into two groups—male employees with pregnant spouses and all employees with dependents. "While the first group is exclusively . . . [male], the second includes members of both sexes." *Id.*, *quoting from Gilbert*, 429 U.S. at 135, and Geduldig v. Aiello, 417 U.S. 484, 496-97 n.20 (1974). Thus, under the Title VII principles enunciated in *Manhart*, the Shipyard's Plan is not discriminatory on its face under Section 703(a)(1).

The court below did not find that the Shipyard's Plan's pregnancy distinctions "are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other." *Satty*, 434 U.S. at 145 (*quoting from Gilbert*, 429 U.S. at 135). Moreover, even if the disparate impact theory applies to employee benefit plans (*see Manhart*, 435 U.S. at 711 n.20; *Satty*, 434 U.S. at 144-45),

while conceding that the Senate Committee Report on S. 995 indicates that the PDA does not dictate the result in this case, the court below nevertheles apparently based its conclusion on the PDA alone—"Distinctions based on pregnancy, the Congress said, are distinctions based on sex." 667 F.2d at 451. With due deference to the court below, the Shipyard submits that the PDA does not answer the question presented for review in the manner decided by that court.

As noted earlier, this Court held in *Gilbert* that an employer did not violate Section 703(a)(1) of Title VII by providing its employees with a disability benefits plan which covered both male and female employees, but excluded coverage for employees' pregnancy-related disabilities. In reliance on principles set forth in *Geduldig v. Aiello*, 417 U.S. 484 (1974), the Court in *Gilbert* reasoned that Title VII, like the Equal Protection Clause, permits an employer's disability benefits plan to exclude certain risks and that, absent proof that a disability benefits plan containing a pregnancy exclusion is a pretext for invidious discrimination against one sex or the other, or in fact provides fewer benefits for female employees than for male employees, no Title VII violation can be found. 429 U.S. at 135-36. The decision in *Gilbert* flatly rejected the contrary provisions of the EEOC's Guidelines, 29 C.F.R. § 1604.10(b)(1975), which then required employers to treat "disability due to pregnancy or childbirth . . . the same as . . . other temporary disabilities." 429 U.S. at 140-46.

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there is no record evidence to show that the Shipyard's Plan has an actual adverse impact on male employees. In addition, a finding of such impact does not establish a Title VII violation. Such a finding does no more than create a *prima facie* case of a Title VII violation which the employer must be given an opportunity to attempt to rebut. *See, e.g., Satty*, 434 U.S. at 144-46; Dothard v. Rawlinson, 433 U.S. 321, 329 (1977); Albemarle Paper Co. v. Moody, 422 U.S. 405, 422, 425 (1975); Griggs v. Duke Power Co., 401 U.S. 424 (1971). The court below gave the Shipyard no such opportunity.

In the eyes of many, including Justice Brennan, the result in *Gilbert* was inconsistent with "the ultimate objective of Title VII, 'to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered [*sexually*] *stratified job environments* to the disadvantage of [women].'" 429 U.S. at 160 (Brennan, J., dissenting) (*quoting from McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800 (1973)) (brackets in original). Justice Brennan also noted that this result was contrary to "the uniform testimony of governmental investigations which show that pregnancy exclusions built into disability programs both financially burden *women workers* and act to break down the continuity of the employment relationship, thereby exacerbating women's comparatively transient role in the labor force." 429 U.S. at 158 (Brennan, J., dissenting) (emphasis added).

The PDA was enacted by Congress in 1978 in direct response to concerns such as those articulated by Justice Brennan in his dissenting opinion in *Gilbert*. The PDA emerged from identical bills—S. 995 and H.R. 5055—both of which were expressly designed to ease the pregnancy-related burdens faced by women workers.[19] It added a

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[19] When introducing S. 995, Senator Harrison A. Williams, Jr., its chief sponsor, as well as the chairman of the Senate Committee on Labor and Human Resources, explained that enactment of his bill was necessary because, "[W]*orking women* throughout our Nation from varied walks of life are in need of relief." 123 Cong. Rec. S4,142-43 (1977) (remarks of Sen. Williams), *reprinted in* Senate Comm. on Labor and Human Resources, 96th Cong., 2d Sess., *Legislative History of the Pregnancy Discrimination Act of 1978* 1, 4 (Comm. Print 1980) [hereinafter, "*Legislative History*"] (emphasis added). In introducing H.R. 5055, Congressman Augustus Hawkins stated that his bill would guarantee the continued impact of progressive laws which have lifted many of the barriers previously faced by "*women entering the labor market.*" 123 Cong. Rec. E1,487 (1977) (remarks of Rep. Hawkins) (*Legislative History* 12) (emphasis added). When he later introduced

new subsection to the definitions section of Title VII (Section 701) to "require that pregnant women be treated the same as other employees on the basis of their ability or inability to work." [20] In pertinent part, this new subsection, Section 701(k), provides as follows:

H.R. 6075, which was identical to H.R. 5055 except that it added language relating to abortions, Congressman Hawkins asserted that, "[E]nactment of this bill is necessary [because] . . . discrimination against pregnant women is one of the chief ways in which *women's careers* have been impeded and *women employees* treated like second-class employees." 123 Cong. Rec. E2,095 (1977) (remarks of Rep. Hawkins) (*Legislative History* 25) (emphasis added).

See also 123 Cong. Rec. S14,989 (1977) (remarks of Sen. Williams) (*Legislative History* 62) ("the overall effect of discrimination against women because they might become pregnant, or do become pregnant, is to relegate women in general, and pregnant women in particular, to a second-class status with regard to *career advancement and continuity of employment and wages*") (emphasis added); H.R. Rep. No. 95-948, 95th Cong., 2d Sess. (Mar. 13, 1978) (*Legislative History* 148) ("It is the committee's view that the dissenting Justices [in *Gilbert*] correctly interpreted the Act"); 124 Cong. Rec. S18,978 (1978) (remarks of Sen. Javits) (*Legislative History* 203) ("Without [the PDA] . . . *women workers* would face serious obstacles to continuing their pregnancy and maintaining their jobs at the same time") (emphasis added).

[20] S. Rep. No. 95-331, 95th Cong., 1st Sess. 4 (July 6, 1977) (*Legislative History* 41) ("The bill [S. 995] would simply require that pregnant women be treated the same as other employees on the basis of their ability or inability to work"); H. Rep. No. 95-948, *supra* (*Legislative History* 150) ("The bill [H.R. 6075] would simply require that pregnant women be treated the same as other employees on the basis of their ability or inability to work"). *See also* 124 Cong. Rec. E6,863 (1978) (remarks of Rep. Hawkins) (*Legislative History* 166) ("H.R. 6075 was introduced . . . to clarify congressional intent that sex discrimination includes discrimination based on pregnancy and specifically to define the standards which require that pregnant workers be treated the same as other employees on the basis of their ability or inability to work").

> The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work . . . .

42 U.S.C. § 2000e-(k).

According to the court below, the first clause of Section 701(k) makes it unlawful for employers to make *any* distinctions based on pregnancy, childbirth, or related medical conditions, even distinctions which impact only on non-employees. This interpretation ignores the fact that the first clause of Section 701(k) is limited by the second clause of the same sentence. *See Lockheed, supra*, 680 F.2d at 1245 ("The second clause . . . clarifies the Congressional intent by restating the substance of the first clause in other than definitional terms").[21]

The decision of the court below also ignores the fact that the first clause of Section 701(k) is purely definitional—it does not prohibit anything. It says only that discrimination based on pregnancy, etc., is sex discrimination. The addition of this broad definition to Title VII did not increase an employer's Title VII obligations so as to make it *a violation of Title VII* for an employer to make *any* distinctions on the basis of pregnancy, childbirth, or related medical conditions.[22] Title VII proscribes

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[21] *See also* previous footnote.

[22] The Senate Report expressly stated that S. 995 "defines sex discrimination, *as proscribed in the existing statute*, to include . . . physiological occurrences peculiar to women; *it does not change the application of Title VII to sex discrimination in any other way.*" S. Rep. No. 95-331, *supra*, 3-4 (*Legislative History* 40-41) (emphasis

employer actions only with respect to employees and applicants for employment.

Only two provisions of Title VII—Sections 703(a) and 704—contain prohibitions on employer actions. Section 704, 42 U.S.C. § 2000e-3, is not pertinent to this case.[23] Section 703(a) provides as follows:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a). This Section cannot be read to prohibit an employer from making distinctions between various categories of the *dependents* of its employees in determining what risks will be covered by its health insurance plan.

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added). *See also* 123 Cong. Rec. S14,991 (1977) (remarks of Sen. Javits) (*Legislative History* 66) ("*This legislation does not represent a new initiative in employment discrimination law, neither does it attempt to expand the reach of Title VII . . . into new areas of employment relationships.* Rather, this bill is simply corrective legislation, designed to restore the law with respect to pregnant women employees to the point where it was last year, before the Supreme Court's decision in *Gilbert*") (emphasis added).

[23] Section 704 prohibits an employer from discriminating against any employee or applicant because he has opposed employment practices which violate Title VII or because he has made a charge,

Nor did the PDA alter in any way an employer's existing Title VII obligations with respect to its male employees. As the Ninth Circuit noted in *Lockheed*, the first clause of Section 701(k), when read together with Section 703(a)(1), prohibits discrimination "against any individual with respect to his compensation . . . because of *such individual's* . . . pregnancy, childbirth or related medical conditions." 680 F.2d at 1245 (emphasis in original). "This can hardly be read to apply to male employees." *Id.* The same conclusion must be reached if Section 701(k) is read together with Section 703(a)(2) —"to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities . . . because of *such individual's* . . . pregnancy, childbirth, or related medical conditions."

The only *command* of the PDA requires employers to treat "women affected by pregnancy, childbirth, or related medical conditions . . . the same . . . as other persons not so affected but similar in their ability or inability to work . . . ." This language, found in the second clause of Section 701(k), cannot be read to increase an employer's Title VII obligations with respect to *male employees*.[24] Moreover, as Judge Hall pointed out in his dissent in the decision at issue herein, this language cannot possibly be read to add to Title VII a prohibition against discrimination with respect to the wives of male employees:

> To determine whether a pregnant woman is being treated the same as some other person who has the similar ability or inability to work, the pregnant woman, by logical necessity, must also be an em-

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testified, assisted, or participated in any manner in a Title VII investigation, proceeding, or hearing, and prescribes neutral advertising relating to employment unless religion, sex, or national origin is a bona fide occupational qualification for employment.

[24] *See also* n.22, *supra*.

> ployee. To hold otherwise is to simply ignore the language of the Act.

667 F.2d at 452 (Hall, J., dissenting). *See also Lockheed, supra*, 680 F.2d at 1245. Thus, the Shipyard submits that the language of the PDA compels a conclusion that the PDA does not address, let alone decide, the question of an employer's obligation under Title VII to provide health insurance benefits for the pregnancy-related expenses of the wives of male employees.

The legislative history fully supports this conclusion. In its report to the Senate on S. 995, the bill which ultimately was passed by both branches of Congress as the PDA, the Senate Commitee on Labor and Human Resources stated:

> Questions were raised in the committee's deliberations regarding how this bill would affect medical coverage for dependents of employees, as opposed to employees themselves. In this context it must be remembered that the basic purpose of this bill is to protect women employees, it does not alter basic principles of title VII law as regards sex discrimination. Rather, this legislation clarifies the definition of sex discrimination for title VII purposes. Therefore *the question in regard to dependents' benefits would be determined on the basis of existing title VII principles.*

S. Rep. No. 95-331, *supra*, 5-6 (*Legislative History* 42-43) (emphasis added). Moreover, in a colloquy with Senator Hatch on the Senate floor, Senator Williams, the principal sponsor of S. 995, assured Congress that his bill did not cover employees' dependents.[25]

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[25] Mr. HATCH: *The phrase "women affected by pregnancy, childbirth or related medical conditions," . . . appears to be overly broad,* and is not limited in terms of employment. It does not require that the person so affected be pregnant.

Indeed, under the present language of the bill, it is arguable that spouses of male employees are covered by this civil rights amend-

In addition, although it argued before the court below that the PDA itself made it unlawful for an employer to discriminate against the spouses of male employees, the EEOC once recognized that the PDA does not answer the question presented for review. In promulgating the final post-PDA amendments to its Guidelines, the EEOC advised the public as follows:

> The Commission concluded that health insurance benefits for the pregnancy-related conditions of the male employee's spouse must be available to the same extent as health insurance benefits are available to the female employee's spouse. . . .
>
> The Pregnancy Discrimination Act amends Title VII of the Civil Rights Act of 1964, as amended. To

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ment. One might even argue that other female dependents are covered. And what about the status of a woman coworker who is not pregnant but rides with a pregnant woman and cannot get to work once the pregnant female commences her maternity leave or the employed mother who stays home to nurse her pregnant daughter? Are they women "affected by" pregnancy?

Could the sponsors clarify exactly whom that phrase intends to cover?

* * * *

Mr. WILLIAMS: If there is an ambiguity, with regard to income maintenance plans, I cannot see it. ". . . shall be treated the same for all employment-related purposes." I do not see how one can read into this any pregnancy other than that pregnancy that relates to the employee, and *if there is any ambiguity, let it be clear here and now that this is very precise. It deals with a woman, a woman who is an employee,* an employee in a work situation where all disabilities are covered under a company plan that provides income maintenance in the event of medical disability; that her particular period of disability, when she cannot work because of childbirth or anything related to childbirth is excluded. It is narrowly drawn and would not give any employee the right to obtain income maintenance as a result of the pregnancy of someone who is not an employee.

Mr. HATCH: OK; or the effects on other people as a result of the pregnancy of a female employee.

Mr. WILLIAMS: Exactly. It does not.

123 Cong. Rec. S15,038-39 (1977) (remarks of Sen. Williams and Sen. Hatch) (*Legislative History* 80) (emphasis added).

> the extent that a specific question is not directly answered by a reading of the Pregnancy Discrimination Act, existing principles of Title VII must be applied to resolve that question. *The legislative history of the Pregnancy Discrimination Act states explicitly that existing principles of Title VII law would have to be applied to resolve the question of benefits for dependents.* (S. Rep. No. 95-331 at 6.)

44 *Fed. Reg.* 23,804 (April 20, 1979) (emphasis added). "Thus it is clear that EEOC's answer to its Question 21 [and 22] is not based on a contemporaneous interpretation of PDA but rather on its erroneous view of pre-existing Title VII principles." *Lockheed, supra*, 680 F.2d at 1246 n.3.

Based on the foregoing analysis and authorities, the Shipyard submits that the court below clearly erred in relying on the PDA in resolving the question presented for review. The PDA did not affect an employer's obligations with respect to male employees and did not impose new obligations with respect to the spouses or dependents of employees. Nor does the PDA, or any other provision of Title VII, prohibit an employer from deciding that its health insurance plan will provide only limited hospitalization benefits, or no such benefits, for pregnancy-related expenses incurred by the dependents of its employees. Accordingly, the Shipyard respectfully submits that this Court should grant the instant Petition in order to correct the erroneous conclusion of the court below on this important issue regarding the proper construction of Title VII.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the *en banc* judgment and opinion of the Fourth Circuit.

Respectfully submitted,

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Dated: September 10, 1982

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Nos. 81-1283, 81-1307

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Appellee,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant,

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, and JOHN MCNULTY,
Defendants.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant,

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Appellee.

June 22, 1982

Before BUTZNER, WIDENER, HALL, PHILLIPS, MURNAGHAN, SPROUSE, ERVIN, and CHAPMAN, Circuit Judges.

PER CURIAM: The judgment of the district court is reversed, and this case is remanded, for the reasons set forth in the panel opinion written by Senior Circuit Judge Haynsworth. Judge Widener, Judge Hall, and Judge Chapman dissent for the reasons set forth in Judge Hall's dissent to the panel opinion. *See* Newport News Shipbuilding and Dry Dock Company v. Equal Employment Opportunity Commission, 667 F.2d 448 (4th Cir. 1982).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Nos. 81-1283, 81-1307

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Appellee,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant,

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, and JOHN MCNULTY,
Defendants,

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant,

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Appellee.

January 7, 1982

Before HAYNSWORTH, Senior Circuit Judge, and BUTZNER and HALL, Circuit Judges.

HAYNSWORTH, Senior Circuit Judge:

The question is the reach of the Pregnancy Discrimination Act.[1] If an employer provides medical insurance

[1] Section 701(k) of Title VII, 42 U.S.C.A. 2000e(k).

coverage for his employees, the Pregnancy Discrimination Act clearly prohibits any exclusion of, or special limitations upon, benefits payable with respect to pregnancy-related disabilities. The question before us is whether an employer which extends such medical insurance benefits to the spouses of employees may limit benefits payable with respect to a spouse's pregnancy-related disability. We conclude that such a limitation is a violation of the Act.

I.

Newport News Shipbuilding and Dry Dock Company provides a hospitalization and medical-surgical health insurance plan for its employees. Coverage is extended to their spouses and unmarried children between the ages of 14 days and 19 years. The benefits include the full cost of a semi-private hospital room for up to 120 days and for other necessary hospital and medical expenses while hospitalized up to 100 per cent of the first $750 and 80 per cent of the excess for up to 120 days. The plan contains no special limitation upon benefits payable with respect to a pregnancy-related disability of a female employee. With respect to maternity benefits payable upon the delivery of a child of the spouse of a male employee, the plan provides full coverage for charges by physicians, but there is a $500 limitation upon the hospital charges in the absence of complications. To the extent that the hospital charges in connection with an uncomplicated delivery may exceed $500, therefore, a male employee receives less complete coverage of spousal disabilities than does a female employee.

A male employee filed a charge with the EEOC alleging discrimination against him arising out of the limitations upon hospital charges incurred in connection with a spouse's uncomplicated delivery of a child. The charge found support in the EEOC's Final Interpretive Guidelines on Sex Discrimination: Questions & Answers 21 and

22.[2] It is there stated that "if an employer's insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions."

Prompted by the filing of that complaint, the company sought in the district court a declaratory judgment that the guidelines were unauthorized and an injunction against their implementation and enforcement. Later, the EEOC filed its complaint against the company alleging discrimination on the basis of sex in the company's provision of health benefits.

The district court ruled for the company in the first case holding that the Pregnancy Discrimination Act applied to employees, but not to spouses of employees. *See Newport News Shipbuilding and Dry Dock Company v. Equal Employment Opportunity Commission*, 510 F. Supp. 66 (E.D.Va.1981). The EEOC's complaint was then dismissed, and appeals in both cases were consolidated here.

II.

The subsection added by the Pregnancy Discrimination Act to § 701 of Title VII of the Civil Rights Act of 1964, in pertinent part reads as follows:

> "The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . ."

With emphasis upon the second clause of the subsection and particularly the words "for all employment-related

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[2] 44 Fed.Reg. 23807-808 (April 20, 1979).

purposes", the company contended, and the district court held, that the subsection applied only to employees and benefits payable with respect to their disabilities and not to benefits payable with respect to the disabilities of spouses of male employees. In the background, of course, is the Supreme Court's holding in *General Electric Co. v. Gilbert*, 429 U.S. 125, 97 S.Ct. 401, 50 L.Ed.2d 343 (1976), which held that an employer, in providing disability insurance benefits for its employees, could exclude pregnancy-related disabilities. The Supreme Court had reasoned that classifications concerning pregnancy were not necessarily sex-based. The classification put pregnant women in one class and non-pregnant persons of both sexes in the other. The Supreme Court's decision in *Gilbert*, or course, triggered enactment of the Pregnancy Discrimination Act. The company, however, contends that the Congress intended no more than to circumvent the specific holding of the Supreme Court in *Gilbert* and construes the statute to extend benefits only to female employees and female applicants for employment. In any other context, including the context of this case, it is contended that the Supreme Court's decision in *Gilbert* remains unaffected.

The language of the statute is tortured by that construction. When an employer considers extension of medical benefits to the spouses of employees, it does so with an "employment-related purpose" just as it does when it considers the extension of such benefits to employees. Benefits would never be extended to spouses if the extension did not serve an employment-related purpose. The first clause of the subsection provides that the terms "because of sex" and "on the basis of sex" include because of, or on the basis of, pregnancy, childbirth and related medical conditions. By statutory definition those disabilities are within the meaning of the word "sex." There is nothing in the first clause to suggest that the definition will vary depending upon the employment status of the pregnant woman. The second clause reads quite

harmoniously with the first, since coverage of spouses is employment-related and the statutory reference to the receipt of fringe benefits contains no intimation that benefits payable with respect to the disability of a spouse are excluded from the statute's reach. The statutory reference to "ability or inability to work" denotes disability and does not suggest that the spouse must be an employee of the employer providing the coverage. In fact, the statute says "as other persons not so affected"; it does not say "as other *employees* not so affected."

The district court found support for its conclusion in some legislative history. There were references on the floor of each house to a purpose to extend protection to "working women" or "pregnant workers", but Senators Bayh and Cranston referred specifically to the problem presented here. Each thought that if an employer provides full coverage for spouses of female employees full coverage must be provided for the spouses of male employees.[3] Senate Report No. 95-331, 95th Cong., 1st Sess. 5-6 (1977) does contain a passage which suggests that the Senate Committee thought this an open question.

> It was suggested before this committee that an effect of Title VII, once this bill was enacted, would be to require that if the maternity costs of women employees were paid under a medical plan, the similar costs for wives of male employees would also have to be covered, whether or not the employer provided any other coverage for dependents. This suggestion is incorrect. This bill would not mandate that women dependents be compared with women employees, or that male employees with pregnant wives be compared with women employees themselves pregnant.
>
> On the other hand, the question of whether an employer who does cover dependents, either with or without additional cost to the employee, may exclude

[3] See 123 Cong.Rec. 29642 (1977); 123 Cong.Rec. 29663 (1977).

> conditions related to pregnancy from that coverage is a different matter. Presumably because plans which provide comprehensive medical coverage for spouses of women employees but not spouses of male employees are rare, we are not aware of any Title VII litigation concerning such plans. It is certainly not this committee's desire to encourage the institution of such plans. If such plans should be instituted in the future, the question would remain whether, under Title VII, the affected employees were discriminated against on the basis of their sex as regards the extent of coverage for their dependents.

If the Senate Committee thought the question an open one, however, that fact provides no platform for the company's contention that the question should be resolved upon a consideration of the reach of Title VII prior to enactment of the Pregnancy Discrimination Act. Upon enactment, the new subsection became an integral part of Title VII. If the Senate Committee thought that the question would be resolved in subsequent litigation, the statute to be applied surely would be the statute as it existed at the time the operative facts developed.

We cannot read the statute so narrowly as to overturn the specific holding in *Gilbert* without affecting the reasoning upon which that holding was based. The language of the new statute strongly indicates a purpose to equate pregnancy, childbirth and related medical conditions with sex. Distinctions based on pregnancy, the Congress said, are distinctions based on sex.

Since the company's health insurance plan contains a distinction based on pregnancy that results in less complete medical coverage for male employees with spouses than for female employees with spouses, it is impermissible under the statute.

REVERSED AND REMANDED.

K. K. HALL, Circuit Judge, dissenting:

The majority overlooks a critical phrase in the Pregnancy Discrimination Act. The Act provides, in pertinent part:

> "[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes . . . as other persons not so affected *but similar in their ability or inability to work*. . . ." [Emphasis added.]

To determine whether a pregnant woman is being treated the same as some other person who has the similar ability or inability to work, the pregnant woman, by logical necessity, must also be an employee. To hold otherwise is to simply ignore the language of the Act.

Regardless of one's personal feelings on the matter, pregnancy-based classifications are lawful except to the extent that *General Electric v. Gilbert*, 429 U.S. 125, 97 S.Ct. 401, 50 L.Ed.2d 343 (1976) has been limited by the Act. Had Congress intended to completely eviscerate *Gilbert*, it could have easily done so without references to a woman's ability or inability to work.

For these reasons, I respectfully dissent.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

Civil Action No. 80-20-NN

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Plaintiff,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, and JOHN MCNULTY,
Defendants.

February 25, 1981

AMENDED OPINION AND ORDER

On January 31, 1980, the plaintiff, the largest private employer in the Commonwealth of Virginia, filed a Complaint seeking a declaratory judgment and a permanent injunction against the Equal Employment Opportunity Commission's (EEOC), implementation and enforcement of "Final Interpretive Guidelines" Numbers 21 and 22, interpreting the Pregnancy Discrimination Act, Public Law 95-555, 42 U.S.C. § 2000e-(k) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq* (Title VII), and against defendant United Steelworkers of America, AFL-CIO-CLC (Steelworkers) (the bargaining agent for many of the plaintiffs' employees), and John McNulty, an employee, which have filed charges with the EEOC seeking enforcement, in effect, of these "Final Interpretive Guidelines" against the plaintiff. The plaintiff contends that the EEOC guidelines which would require the plaintiff to extend pregnancy-related benefits to spouses of male employees who are not themselves employees are ultra vires the statutory power of the EEOC,

contrary to the intent of Congress, arbitrary, capricious, and not in accordance with law. The EEOC contends that its guidelines are in harmony with Title VII's prohibition against sex discrimination and are consistent with the legislative history of the Pregnancy Discrimination Act.

The defendant McNulty has filed a charge against the Shipyard complaining that his wife, who is not an employee of the Shipyard, has been denied pregnancy benefits under the Act.

Background and Discussion

In 1976, the Supreme Court, in *General Electric Co.* v. *Gilbert*, 429 U.S. 125 (1976), held that it was not an unlawful employment practice within the proscription of Title VII of the Civil Rights Act of 1964,[1] as amended, for an employer to provide a disability plan which provided non-occupational sickness and accident benefits to all employees but excluded from its coverage disabilities arising from pregnancy. In determining whether the plan offered by General Electric to its employees violated Title VII, the Court utilized the Equal Protection analysis of a previous Supreme Court decision, *Geduldig* v. *Aiello*, 417 U.S. 484 (1974) and stated that, absent a showing of gender-based discrimination as that term was defined in *Geduldig*, or a showing of gender-based effect, there can be no violation of Title VII § 703(a)(1).

In *Geduldig*, the Supreme Court held that excluding pregnancy from a disability program established under California law did not constitute gender-based discrimination in violation of the Equal Protection Clause of the

---

[1] Section 703(a) of Title VII of the Civil Rights Act of 1964, as amended provides:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . . .

Fourteenth Amendment. The Supreme Court in *Gilbert* cited portions of the *Geduldig* decision:

> [T]his case is thus a far cry from cases like *Reed* v. *Reed*, 404 U.S. 71 (1971), and *Frontiero* v. *Richardson*, 411 U.S. 677 (1973), involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefits eligibility because of gender but merely removes one physical condition—pregnancy—from the list of compensible disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in *Reed*, *supra*, and *Frontiero*, *supra*. Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this one on any reasonable basis, just as with respect to any other physical condition.
>
> The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups —pregnant women and non-pregnant persons. While the first group is exclusively female the second includes members of both sexes.

429 U.S. at 134-135 citing *Geduldig* at 496-497 n.20. Thus, in *Gilbert* the Supreme Court, using the analysis established in *Geduldig*, found that General Electric's exclusion of pregnancy-related disabilities from coverage in a disability plan did not constitute discrimination on the basis of gender and did not create a gender-based discriminatory effect in violation of Title VII.

On October 31, 1978, Congress, in response to the Supreme Court's decision in *Gilbert*, enacted the Pregnancy Discrimination Act (PDA), Pub. L. No. 95-555, which amended § 701 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, by adding the following subsection:

> (k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . .

The clear legislative intent behind the PDA was to "insure that *working women* are protected against all forms of *employment discrimination* based on sex" as defined by subsection (k). S. Rep. No. 331, 95th Cong., 1st Sess. July 6, 1977 p. 3 (emphasis added). The legislative history specifically states that the Act "does not change the application of Title VII to sex discrimination in any other way." *Id.* at 3. Furthermore, the legislative history of the PDA states explicitly that the Act does not reach the issue of dependents' benefits but that the question of dependents' benefits would have to be resolved using the existing principles of Title VII. *Id.* at 6.

After Congress passed the Pregnancy Discrimination Act, the EEOC issued final interpretive guidelines in the form of questions and answers establishing and clarifying the position of the EEOC on the issue of dependents' benefits. *See* 44 Fed. Reg. 23804 (April 20, 1979). In adopting these guidelines, the EEOC recognized that the PDA did not resolve the question of dependents' benefits and it purported to utilize the existing principles of Title VII in establishing its position. *See* 44 Fed. Reg. 23804. The

two guidelines (in the form of questions and answers No. 21 and 22) challenged in this action are:

21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees? Of the dependents of all employees?

A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employers' insurance program covers the medical expenses of spouses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions. But the insurance does not have to cover the pregnancy-related conditions of non-spouse dependents as long as it excludes the pregnancy-related conditions of such non-spouse dependents of male and female employees equally.

22. Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However where the employer provides coverage for the medical conditions of the spouses of its employees, the level of coverage for pregnancy-related medical conditions of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100 percent of reasonable and customary expenses sustained for a medical condition, but only covers

> dependent spouses for 50 percent of reasonable and customary expenses for their medical conditions, the pregnancy-related expenses of the male employees spouse must be covered at the 50 percent level.

The plaintiff in this action, Newport News Shipyard, maintains a medical plan which pays a major part of the cost of medical and hospital care caused by non-occupational illnesses or accidents of dependents of employees of the Shipyard. The maternity benefits under the plan, however, are limited to $500 of the hospital charges with additional allowances for hospital costs only if there are complications.[2] The defendant McNulty has filed a claim with the EEOC alleging that his wife did not receive the pregnancy-related benefits she is entitled to under the EEOC's interpretation of the Act.

The sole issue before this Court is whether, under the existing principles of Title VII, it is an unlawful employment act for an employer to provide disability coverage for dependents of employees but exclude from that coverage the pregnancy-related expenses of spouses of male employees. The Supreme Court in *Gilbert, supra,* and *Geduldig, supra,* state clearly that the exclusion of pregnancy-related benefits from a disability program does not constitute gender-based discrimination and that, absent a showing of gender-based effect, there can be no violation of Title VII § 703(a)(1). Although the PDA carved out a narrow exception with respect to female employees or applicants for employment, it clearly did "not change the application of Title VII to sex discrimination in any other way." S. Rep. No. 331, 95th Cong., 1st Sess. July 6, 1977 p.3. Thus, in situations not involving female employees or applicants for employment, the principles of Title VII as enunciated in *Gilbert, supra,* remain unchanged.

---

[2] The record does not indicate whether the Shipyard pays for the pregnancy-related disabilities of its female employees. However, there has been no challenge to the plan on that ground.

Guidelines established by the EEOC are, of course, entitled to consideration in determining legislative intent. *See General Electric Co.* v. *Gilbert*, 429 U.S. 125, 142 (1976); *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975). However, Congress, in enacting Title VII did not confer upon the EEOC the authority to promulgate rules or regulations pursuant to that Title. *Albemarle*, at 431 *supra*. Consequently, EEOC guidelines are interpretive guidelines and as such represent only an agency's interpretation of the law, *Association of American R.R.* v. *United States*, 603 F.2d 953, 962 (D.C. Cir. 1979) and "courts properly may accord less weight to such guidelines than to administrative regulations which Congress has declared shall have the force of law or to regulations which under the enabling statute may themselves supply the basis for imposition of liability." 429 U.S. at 142 (citations omitted). In *Gilbert* the Supreme Court stated that the weight accorded to interpretive rulings such as the EEOC guidelines will "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 429 U.S. at 142 *citing Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944).

The EEOC guidelines in question do not fare well under these standards. The EEOC guidelines directly contradict the Title VII principles of sex discrimination as defined by the Supreme Court in *Gilbert* and which, with the exception of female employees and applicants for employment, remain in force unaltered by the PDA. Furthermore, the guidelines attempt to accomplish what Congress explicitly chose not to do. The guidelines in question attempt to extend the reaches of Title VII by requiring employers who provide disability plans for spouses of employees to include in those plans pregnancy-related expenses. The legislative history of the PDA states that the PDA does not deal with the question of dependents' benefits. Congress contemplated the precise issue dealt with in the EEOC guidelines, yet chose to

leave that issue to be determined on the basis of the existing principles of Title VII. *See* Floor Debate on S. 995 Sept. 16, 1977 (pp. 15035-15060); S. Rep. No. 331, 95th Cong., 1st Sess. July 6, 1977 p. 6. Congress was aware at that time of the Supreme Court's decision in *Gilbert* defining sex discrimination for the purposes of Title VII and acknowledged that the PDA did not alter the application of Title VII to sex discrimination in any other way. *Id.* at 3. The Court notes also that the EEOC has flatly contradicted itself in the past in enunciating its position on the proper interpretation of the sex discrimination provisions of Title VII and for this reason EEOC guidelines were given little deference by the Supreme Court in *Gilbert*. For these reasons, the Court declines to defer to the EEOC guidelines in determining whether under the existing principles of Title VII it is an unlawful employment act for an employer to provide disability coverage for dependents of employees but exclude from that coverage the pregnancy-related expenses of spouses of male employees.

Conclusions

The Supreme Court in *Gilbert* held that the exclusion of pregnancy-related expenses from an employer's disability plan does not constitute gender-based discrimination and that, absent a showing of gender-based effect, there can be no violation of Title VII § 703(a)(1). The PDA altered this only with respect to female employees and applicants for employment, leaving intact the principles previously enunciated by the Supreme Court in *Gilbert*. Therefore, based on the existing principles of Title VII as set forth by the Supreme Court in *Gilbert* and set out in the Opinion of this Court, we HOLD that the disability plan of the plaintiff, which provides disability coverage for dependents of employees but limits that coverage with respect to pregnancy-related expenses of spouses of employees does not constitute gender-based discrimination. Furthermore, the Court notes that there has been no showing that the plan, by limiting its cover-

age of pregnancy-related expenses of spouses of male employees has caused any gender-based effect in violation of Title VII § 703(a)(1). Accordingly, the Court HOLDS that the plaintiff's disability plan does not violate Title VII, EEOC Guidelines NO. 21 and 22 notwithstanding. The Court FINDS that an actual controversy exists within its jurisdiction from the admitted circulation of the questioned guidelines to the Shipyard's employees, the admitted espousal of the guidelines by the Union, and from the claim of McNulty. 28 U.S.C. § 2201. Therefore, the Court DECLARES that EEOC Guidelines No. 21 and 22 are contrary to law and are of no force and effect and that the defendant McNulty and his wife are not entitled to any benefits under the Act not presently provided to them by the plaintiff.

Injunctive Relief

The Complaint filed by the plaintiff states in paragraph 1:

> Plaintiff seeks a declaratory judgment and a permanent injunction against the Equal Employment Opportunity Commission's . . . implementation and enforcement of . . . Interpretive Guidelines concerning "The Pregnancy Discrimination Act," . . . and against the Defendants United Steel Workers of America . . . which have filed charges with the EEOC seeking enforcement . . . of the Final Interpretive Guidelines against Plaintiff.

In its prayer for relief at the end of the Complaint, the plaintiff requests that the Court permanently enjoin the EEOC from enforcing its Final Interpretive Guidelines and that the Court grant such additional relief as the Court may deem just and proper. The Court is of the opinion that the language of the Complaint is sufficiently broad to justify the Court's granting of injunctive relief and is sufficiently specific to apprise both defendants that the relief being sought is to enjoin them

from representing to the Shipyard employees or their dependents that the law mandated that pregnancy benefits be extended to the spouses of employees.

The plaintiff's Complaint has requested injunctive relief against the EEOC and such relief is appropriate. Although it is the final judgment of this Court that Guidelines 21 and 22 are contrary to law and are of no force and effect, these guidelines are published in materials available to the public. Thus, although spouses of employees are not in fact entitled to pregnancy benefits as a matter of law, these published guidelines create the continuing expectation in the mind of the public that they are legally entitled to such benefits. As a result, employees and their families may be making budgetary and other decisions based on these erroneous expectations and Newport News Shipyard may be required to respond to countless unfounded suits by employees and their spouses seeking the pregnancy benefits they have been told they are entitled to. Furthermore, by perpetuating the belief that these benefits are in fact available to spouses of employees, the EEOC, which is entrusted with the responsibility of educating the public in these matters and which is depended upon by the public for such information, would, in fact, be providing the public with false and misleading information and would be disregarding the finality and effect of this Court's judgment in the case.

The EEOC takes the position that if injunctive relief is granted it will interfere with the ability of the EEOC to advise fully persons coming to it for assistance, especially persons claiming to be aggrieved by personnel practices of the Shipyard. Specifically, the EEOC states that an injunction would create the impression that the EEOC cannot accept charges or discuss the merits of charges filed by individuals claiming that the failure to grant pregnancy benefits to spouses of employees is a discriminatory act. The EEOC also claims that an injunctive provision would interfere with the First Amendment

rights of employees and other aggrieved persons seeking assistance from the EEOC.

A provision specifically enjoining the EEOC from representing to any employee of the Shipyard or dependent of any such employee that a dependent of an employee is entitled to pregnancy benefits *by operation of law* does not create the problems which the EEOC fears. Such an Order does not restrain the EEOC from accepting charges or discussing the merits of any claims for pregnancy benefits.

The EEOC also claims that an injunction would raise doubts as to the advice that EEOC employees can give regarding such allegations under the Equal Pay Act, 29 U.S.C. § 206(d). The EEOC has failed to point out how such doubts may come about and in what way advice given by the EEOC would be affected.

With respect to the request of the Shipyard that it be granted an injunction against the Union, the Court FINDS that, at this time, there is no indication that the Union will persist in representing to the public that dependents of employees of the Shipyard are entitled to pregnancy benefits as a matter of law. Accordingly, the Court DECLINES to issue an injunction against the Union. However, should it appear in the future that the Union is representing to the public that dependents of employees of the Shipyard are entitled to pregnancy benefits as a matter of law, the Court will entertain applications for injunctive relief against the Union at that time.

For the reasons stated in this Order, the EEOC and all of its agents and employees are ENJOINED and RESTRAINED from representing to any employee of the Shipyard or dependent of any such employee that a dependent of an employee is entitled to pregnancy benefits by operation of law.

It is so ORDERED.

/s/ J. Calvitt Clarke, Jr.
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

Civil Action No. 80-20-NN

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Plaintiff,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, and JOHN MCNULTY,
Defendants.

February 25, 1981

AMENDED JUDGMENT

This action came on for hearing before the Court, Honorable J. Calvitt Clarke, Jr., United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the defendant John McNulty and his wife are not entitled to any benefits under the Act not presently provided to them by the plaintiff;

FURTHER that the EEOC and all of its agents and employees are ENJOINED and RESTRAINED from representing to any employee of the Shipyard or dependent of any such employee that a dependent of an employee is entitled to pregnancy benefits by operation of law.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

Civil Action No. 80-237-NN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

v.

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Defendants.

February 4, 1981

ORDER

This matter comes before the Court on the defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted. Rule 12(b), Fed. R. Civ. P.

For the reasons stated in the Court's Opinion and Order in Civil Action No. 80-20-NN, *Newport News Shipbuilding and Dry Dock Company* v. *Equal Employment Opportunity Commission*, the Court concludes that the plaintiff has failed to state a cause of action for which relief may be granted, and the Motion to Dismiss is GRANTED.

The Complaint is DISMISSED with prejudice.

/s/ J. Calvitt Clark, Jr.
United States District Judge

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 81-1283

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Appellee,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant,

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC, and JOHN MCNULTY,
Defendants.

June 22, 1982

JUDGMENT

Appeal From the United States District Court
for the Eastern District of Virginia

THIS CAUSE came on to be heard on the record and the petition for rehearing, and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, upon rehearing, that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed. The case is remanded to the U.S. District Court for the Eastern District of Virginia, at Newport News, for further proceedings consistent with the opinion of this Court filed herewith.

/s/ William K. Slate, II
Clerk

APPENDIX G

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 81-1307

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,
Appellant,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellee,

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC, and JOHN MCNULTY,
Defendants.

June 22, 1982

JUDGMENT

Appeal From the United States District Court
for the Eastern District of Virginia

THIS CAUSE came on to be heard on the record and the petition for rehearing, and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, upon rehearing, that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed. The case is remanded to the U.S. District Court for the Eastern District of Virginia, at Newport News, for further proceedings consistent with the opinion of this Court filed herewith.

/s/ William K. Slate, II
Clerk

APPENDIX H

HOSPITALIZATION

AND

MEDICAL-SURGICAL PLAN

for

Production, Maintenance, Technical
and Clerical Unit
Eligible Employees

PLAN IDENTIFICATION NUMBER
NNS (PN) - 504

NEWPORT NEWS SHIPBUILDING
A Tenneco Company Newport News, Virginia

INTRODUCTION TO NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY HOSPITALIZATION/MEDICAL/SURGICAL PLANS FOR PRODUCTION, MAINTENANCE, TECHNICAL AND CLERICAL UNIT ELIGIBLE EMPLOYEES

As a participant in Newport News Shipbuilding and Dry Dock Company Basic Hospitalization and Medical-Surgical Service and Major Medical Expense Benefit Plans for Production, Maintenance, Technical, and Clerical Unit Employees, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

> Examine, without charge, at the Plan Administrator's office, all plan documents, including collective bargaining agreements, and copies of all documents filed by the Plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.
>
> Obtain copies of all plan documents and other plan information upon written request to the Plan Administrator. The Administrator may make a reasonable charge for the copies.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries.

No one, including your employer, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the rea-

son for the denial. You have the right to have the Plan Administrator review and reconsider your claim.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to $100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court.

The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about your plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor Management Services Administration, Department of Labor.

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NEWPORT NEWS SHIPBUILDING

HOSPITALIZATION AND MEDICAL-SURGICAL PLAN

for Production, Maintenance, Technical and Clerical Unit Eligible Employees

1. What is the Hospitalization and Medical-Surgical Plan?

It is a group medical plan designed to help employees provide quality health care for themselves and their families. The Plan does so by paying a major part of the cost of medical care caused by non-occupational illnesses or accidents. Work related illnesses or accidents are covered through the employer's Workers' Compensation program.

2. What are the Plan and employer identification numbers?

The Plan Identification Number is NNS(PN)-504. The employer Identification Number is NNS 54-0318880.

3. When was the Hospitalization and Medical-Surgical Plan established?

It was established February 26, 1951.

4. How are Plan records maintained?

All Plan records are maintained on a calendar year basis (January 1 to December 31).

5. Who pays the cost of the Plan?

Each participating company pays the cost of providing the medical coverage for its employees. Employees are not required to contribute. (Refer to Appendix I for a list of participating companies.)

6. Who is the Plan Administrator?

Newport News Shipbuilding and Dry Dock Company
Benefits Committee
4101 Washington Avenue
Newport News, Virginia 23607
(804) 380-7886

7. Who is the Agent for Service of Legal Process?

V. F. Ewell, Jr., Vice President and General Counsel
Newport News Shipbuilding and Dry Dock Company
4101 Washington Avenue
Newport News, Virginia 23607

PARTICIPATION

8. Who may participate in the Plan?

All active, full time, production, maintenance, technical and clerical areas' bargaining-unit eligible employees become plan participants on the first day following three months of continuous service provided they are actively at work on that day.

9. Are dependents covered under this Plan?

Yes. Dependents are covered at the same time as employees.

10. How does the Plan define dependents?

Dependents are:

A. An employee's spouse

B. An employee's unmarried children who are at least fourteen days of age, but under nineteen years of age.

11. Does the Plan include adopted children and stepchildren as dependents?

Yes. The Plan includes a legally adopted child as well as a stepchild residing in an employee's home. It

also includes a child permanently living in an employee's household who is solely supported by the employee and who is between 14 days and 19 years of age.

12. Is coverage extended to dependents older than 19 years of age?

Yes. Coverage is extended after age 19 to the following dependents:

A. unmarried children up to age 23 who are full-time students at a college and who depend solely upon an employee for maintenance and support, and

B. unmarried children regardless of age who are mentally or physically handicapped and who:

1. become totally and permanently disabled while covered under the Plan,

2. are unable to engage in substantially all of the normal activities of a person of like age and sex, and

3. depend solely upon an employee for support and maintenance.

Note: The intent of the Plan is to provide coverage for dependent children who continue their education uninterrupted from high school through college, or mentally or physically handicapped children who are unable to support themselves.

13. How is Plan coverage extended for children 19 years of age or older?

Application for extension of coverage beyond age 19 for full time students or mentally or physically handicapped children, must be made within 31 days after the dependent child reaches age 19 at the Health Claims Office located at 210 39th St., Newport News, Va.

COVERAGE

14. What is a covered expense?

A covered expense is any medical expense necessary for the treatment of an illness or injury not specifically excluded or otherwise limited under the Plan.

Examples:

A. Treatment by a family physican for a cold is a covered expense. However, a routine physical examination, where no illness is evident, is not a covered expense.

B. Inoculation for treatment of an existing illness or disease is a covered expense. Inoculation designed to prevent an illness or disease is not a covered expense.

C. Cosmetic surgery that is necessary for the prompt repair of an accidental bodily injury is a covered expense. Cosmetic surgery performed solely to alter or improve one's appearance is not a covered expense.

15. How is coverage provided?

Coverage is provided by the Company through a self-administered hospitalization plan, which is in conformity with the terms and conditions of Article XXIV of the prior Collective Bargaining Agreement. Coverage is provided by either the Basic Plan (discussed in question 16) or Major Medical Plan (discussed in question 19).

Note: Payment of benefits are made from the Company's operating funds in accordance with plan provisions.

16. What does the Basic Plan pay?

The Basic Plan pays in full for:

- A semi-private hospital room, intensive care and coronary care units for up to 120 days.
- Hospital services (including general nursing care, x-ray examinations, drugs) and other necessary

services while hospitalized up to 100% of the first $750, then 80% of the excess up to 120 days.

17. Are separate hospital confinements considered as one period of disability?

Yes, unless satisfactory evidence is provided that:

A. the causes of the separate hospital confinements cannot be connected in any way, or

B. between the hospital confinements the following has occurred

- the employee or dependent has recovered completely from all causes of the previous hospital confinements
- the employee has returned to work for one full day, or
- the dependent has not been hospital confined for at least ninety (90) days.

18. How is "reasonable and customary benefit" defined by the Plan?

This benefit is the average amount charged by doctors providing the same service in the same local area, and is determined by the Newport News Shipbuilding Benefits Committee based on Newport News Shipbuilding computer data which is periodically updated.

19. What does the Major Medical Plan pay?

The Major Medical Plan protection provides an additional $25,000 in lifetime health protection for each employee and eligible dependent. Under the Major Medical Plan, employees are eligible for reimbursement of 80% of reasonable and customary expenses, after a $100 deductible.

20. Is there a maximum lifetime benefit payable under the Major Medical Plan?

There is a maximum lifetime benefit of $25,000 for each employee and covered dependent. Benefits paid during the year are restored every January 1. The maximum

restoration each year is $2,000, up to the maximum benefit of $25,000.

Example: Assume that you had Major Medical expenses totaling $5,000 paid by the Plan in the last calendar year. You also have two dependents, "I" "II," and they had Major Medical expenses totaling $1,000 and $3,000 respectively during the same calendar year. The following shows how the annual restoration works:

		DEPENDENTS	
	Employee	I	II
Maximum lifetime benefit	$25,000	$25,000	$25,000
Major Medical expenses paid	5,000	1,000	3,000
Remaining lifetime maximum	$20,000	$24,000	$22,000
Annual restoration	2,000	1,000	2,000
Lifetime Maximum Benefit After Restoration	$22,000	$25,000	$24,000

21. Is there a deductible for the Major Medical Plan?

Yes, there is a $100 deductible for each family member during a calendar year before Major Medical expense benefits are payable for that individual.

The deductible will apply only once in a calendar year, even though there may be several non-occupational injuries or diseases during the year. Any expenses incurred during the last three months of a calendar year applied against the deductible for that year may also be applied against the deductible for the next calendar year.

For example: Assume that you have these expenses during October, November and December

Doctor's office visits for cold		$40.00
Prescribed drugs for cold		20.00
	Subtotal	$60.00

At this time you have no benefits due from the Plan because your expenses have not exceeded the $100 calendar year deductible.

Assume that in the following year you have the expenses listed below:

Doctor's office visits for illnesses	$ 90.00
Injection for cold	15.00
Prescribed drugs for illnesses	50.00
Subtotal	$155.00
Add expenses from last three months of previous year	$ 60.00
Total Expenses	$215.00
Calculation of Benefits Payable:	
Covered Expenses Claimed	$215.00
Less Calendar Year Deductible	100.00
Subtotal	$115.00
Multiplied by covered Expense Factor	80%
Amount the Major Medical Plan would pay	$ 92.00

22. What is meant by the term "Physician or Surgeon"?

The term means a physician or surgeon who is a Doctor of Medicine (M.D.), who is licensed to practice medicine and perform surgery, and who is not a member of the employee's immediate family.

23. Are services performed by chiropractors covered?

Yes. Coverage is provided under the Major Medical Plan.

24. Are services performed by Christian Science practitioners covered?

Yes, but only if the practitioners are listed in "The Christian Science Journal."

25. What is "Coordination of Benefits"?

Coordination of Benefits is a method of integrating benefits payable under more than one group health insurance plan so that the insured's benefits from all sources do not exceed 100% of the allowable medical expenses.

The amount payable under the Plan will take into account any coverage under other group health insurance plans but not individual policies. The benefits payable

under this Plan will be coordinated with the benefits of other plans. Specifically, this Plan will always pay either the regular benefits in full or a reduced amount which, when added to the benefits payable by other plan(s), will equal 100% of the allowable expenses.

26. Are there any additional facts regarding "Coordination of Benefits" that I should keep in mind?

The following points should always be kept in mind regarding Coordination of Benefits:

- Coordination of Benefits is the practice of the insurance industry.
- If the spouse of an employee works and is eligible for group health care coverage, the employee's personal coverage (under this Plan) is unaffected.

  However, the coverage of the spouse and dependent children may be provided through the coordinated approach discussed above.
- The employed male family member's coverage is primary for himself and dependent children.

For example:

Person Sick or Injured	*Who Pays First*
A. Employee	Newport News Shipbuilding Hospital, Medical, Surgical and Major Medical Plan
B. Spouse of an employee who is employed elsewhere.	Spouse's Group Plan
C. Children of MALE employee whose wife is employed elsewhere	Newport News Shipbuilding Hospital, Medical, Surgical and Major Medical Plan
D. Children of FEMALE employee whose husband is employed elsewhere.	Father's Group Plan

- Examples of typical plans with which the Hospital, Medical, Surgical and Major Medical Plan coordinates are:

  A. Blue Cross and Blue Shield;

  B. Champus;

C. Medicare, and

D. Other Hospital, Medical, Surgical and Major Medical expense plans provided through insurance carriers such as:

(1) Aetna

(2) Metropolitan

(3) Travelers

- This Plan does not coordinate Benefits with other Newport News Shipbuilding Health Care Plans.

Note: No person may be eligible for benefits both as an employee and as a dependent nor as a dependent of more than one employee.

27. What happens when an individual is hospitalized for more than 120 days?

Charges for Room and Board, hospital services and physicians are covered under the Major Medical Plan.

Example: Assume that you are confined to a hospital for 130 days. Charges will be broken down as follows:

	Charges	Charges Paid Under The Basic Plan For The First 120 Days		Charges Covered By The Major Medical Plan After 120 Days
Room & Board ($70 per Day)	$ 9,100.00	$ 8,400.00		$ 700.00
Miscellaneous				
First 120 Days	1,800.00	1,590.00		—
After 120 Days	200.00	—		200.00
Surgeon	1,500.00	1,500.00		—
Physicians				
First 120 Days	1,100.00	1,100.00		—
After 120 Days	100.00	—		100.00
				$1,000.00
	—	—	Less Deductible	(100.00)
	—	—		$ 900.00
	—	—	Paid by Major	x 80%
Totals	$13,800.00	$12,590.00	Medical	$ 720.00

The total charges amount to $13,800.00. The Basic Plan paid $12,590.00 and the Major Medical Plan paid $720.00, therefore the Hospitalization and Medical-Surgical Plan has paid a total of $13,310.00. You pay only $490.00.

28. What maternity benefits are provided?

A. The Basic Plan pays up to $500 of the hospital charges and 100% of reasonable and customary for delivery and anesthesiologist charges.

B. Effective April 29, 1979, maternity benefits for female employees will be paid the same as any other hospital confinement as described in question 16. This applies only to deliveries beginning on April 29, 1979 and thereafter.

C. Maternity benefits for the wife of a male employee will continue to be paid as described in part "A" of this question.

29. Are expenses for surgery performed in the Doctor's office covered?

Yes. Surgery performed in a Doctor's office is covered for 100% of the reasonable and customary charges.

30. Is oral surgery covered under the Plan?

A. The Basic Plan provides limited coverage for oral surgery as follows:

1. surgical removal of impacted teeth,
2. removal of tooth root without extraction of the entire tooth,
3. cutting or filling of a root socket, and
4. certain surgical procedures on the gums and tissues of the mouth.

If you have any questions about planned oral surgery, contact your Plan Administrator to determine if your planned surgery is covered.

31. Does the Plan pay for accidental injury to teeth?

The Major Medical Plan will pay 80% of reasonable and customary charges, after the $100 deductible, for the prompt repair of natural teeth as a result of a non-occupational accident.

32. What coverage is provided for accidental bodily injury?

The Basic Plan covers the actual hospital or doctor's charges for the first treatment of a non-occupational injury. This first treatment must be on the day of the injury or the next day following. Charges after the initial treatment are covered under Major Medical.

33. What coverage is provided for sudden and unexpected severe illness?

The Basic Plan covers the actual hospital emergency room and resident physician's charges for the first treatment.

34. How does the Plan define "sudden and unexpected severe illness"?

It means an urgent need for emergency medical care and an actual hazard to life. In order to be a covered expense, the medical care must be rendered by a hospital emergency room.

35. Will the Plan pay for a private hospital room?

No. The Plan will pay up to 100% of the hospital charges for semi-private rooms only.

36. Does the Plan provide coverage for mental care when a covered family member is not hospitalized?

Yes. Major Medical provides 50% of the reasonable and customary charges for drugs, x-rays and physician's expenses, after the $100 deductible.

37. What expenses are paid under the Major Medical Plan only?

The Major Medical Plan pays 80% of the reasonable and customary charges for the following (after the $100 deductible):

- Outpatient x-ray and radioactive isotopes therapy.
- Outpatient diagnostic x-ray and laboratory examinations.
- Physician's home and office visits.
- Special-duty registered nurse or licensed practical nurses.
- Registered physical therapist while hospitalized.
- Initial purchase of artificial limbs, eyes and durable equipment (iron lung, wheel chairs, etc).
- Ambulance service to the nearest hospital from scene of an accident or place where stricken by a severe illness.
- Consultation services (only one consultation expense will be allowed during each hospital confinement).
- Prescription drugs.

All expenses shown above are subject to the $100 deductible described in question 21.

CLAIM PROCEDURE

38. How do you file a claim?

A. If your claim is for expenses incurred while hospitalized, the hospital and/or physician normally will file the claim for you.

- The hospital's normal billing will be accepted by the Health Claims Office.
- Form NN 4060 (Health Claims Form) is required for physician's expenses when hospitalized.

B. If your claim is for outpatient treatment, the hospital and/or physician normally will bill you directly and you must file the claim.

- It is important to indicate your social security number when submitting a claim.
- Form NN 4060 is required for all physician's charges.

C. You must submit all claims within 90 days.

D. Bills for prescription drugs must be itemized on GC 203 Prescription Drug Record. Form GC 203 is available from the Health Claims Office.

E. When the services are provided in the Hampton-Newport News area, the provider of the service usually will have the proper claim form for you.

F. If the service is provided outside of the Hampton-Newport News area, it will be necessary for you to obtain the proper claim form from the Health Claims Office, 210-39th St.

39. Is there a limitation placed on the time required to file a claim for Major Medical Benefits?

Yes. Health Claims will not accept a claim submitted after December 31 of the year following the year in which the expense was incurred.

APPEAL PROCEDURE

40. What can I do in the event a claim for benefits is denied?

The Plan provides a review procedure which allows you to appeal a denied claim.

If you have made a claim for benefits (following the procedure defined in question 38) and any portion of the claim is denied, Health Claims will send you a written notice stating the reasons for the denial.

41. What steps do I follow if I want to apply for a review?

Step 1—Within ninety (90) days after the date of written notice denying any benefits, a participant, or an authorized representative of a participant, may request a review of the decision by writing to the Benefits Administrator:

Newport News Shipbuilding and Dry Dock Company
Employee Benefits Office
210 39th Street
Newport News, VA 23607

You will have reasonable time, usually thirty (30) days after requesting the review, to submit, in writing, the reasons why the claim should not have been denied. It is important that these comments be made as early as possible so they may be given thorough consideration.

A written response by the Benefits Administrator will include specific reasons for the decision. It will be made as promptly as possible, in the usual case within sixty (60) days after receipt of the request for review.

Step 2—Within ninety (90) days after the date of written notice denying any benefits, a participant, or an authorized representative of a participant, may request a review of the decision by writing to the Director of Personnel:

Newport News Shipbuilding and Dry Dock Company
Employee Benefits Office
3800 Washington Avenue
Newport News, VA 23607

You will have reasonable time, usually thirty (30) days after requesting the review, to submit, in writing, the reasons why the claim should not have been denied.

It is important that these comments be made as early as possible so they may be given thorough consideration.

A written response by the Director of Personnel will include specific reasons for the decision. It will be made as promptly as possible, in the usual case within sixty (60) days after receipt of the request for review.

Step 3—If the claim for benefits is wholly or partially denied by the Director of Personnel, you or your authorized representative may request in writing within sixty (60) days of that denial, a final review of the claim.

Address you request to:

Newport News Shipbuilding and Dry Dock Company
Benefits Committee
4101 Washington Avenue
Newport News, VA 23607

The record of previous review will be forwarded to that office along with any supporting documents you wish to submit, and a decision will be made based on these records. You or your authorized representative will receive notice of the decision within sixty (60) days.

You or your authorized representative may review pertinent documents at any time at the Plan Administrator's office at 210—39th St. during regular business hours.

LOSS OF BENEFITS

42. Under what conditions would I not receive payment of my claim?

A. Failure to submit the properly completed claim form would result in the claim being returned to you (refer to question 38 for claim procedure).

B. Failure to file a claim within the specified time limits detailed in question 39.

C. Claims submitted for expenses not covered by the Plan. No benefits are payable for the expenses listed below, and the amount of any such charges will be deducted from the incurred expenses before the benefits of the Plan are determined.

1. Charges that would not have been made if no coverage existed or charges that neither you nor your dependents are required to pay.
2. Benefits provided by reason of the past or present service of any person in the armed forces.
3. Charges in connection with hospital confinement or any surgical, medical or other treatments not recommended and approved by the attending physician.
4. Charges for care, treatment, services or supplies not necessary for the treatment of the injury or disease concerned.
5. Unreasonable charges for care, treatment, services or supplies.
6. Charges by a licensed psychologist, unless the services are recommended by and are under the direction of a psychiatrist.
7. Charges in connection with any injury or disease arising out of or in the course of employment, where such treatment would be paid under Workers' Compensation.
8. Charges incurred by an individual who is not a covered family member.
9. Charges incurred by any individual arising from an act of violence or riot, if such individual is determined to be the aggressor.
10. Charges for routine physical examinations.

11. Charges for well baby care (routine charges made by the hospital and doctor for the care of a normal, healthy newborn).

12. Charges for non-prescription drugs and medicines.

13. Charges for pre-existing conditions for which treatment, drugs or medical services were provided within the three (3) month period immediately preceding the date coverage would otherwise start.

14. Charges for eyeglasses for any reason.

D. Termination of employment results in an immediate loss of benefits.

E. Failure to meet the eligibility requirements of the Plan at the time the expense was incurred results in a loss of benefits.

F. No benefit is payable if Newport News Shipbuilding discontinues or changes the Plan so that an employee would no longer be able to participate in the Plan or if any participant employer (See Appendix I) discontinues the Plan with respect to all of its employees.

COVERAGE AFTER TERMINATION

43. What happens to my coverage if my employment terminates?

Coverage ends on the date of termination. However, pregnancy will be covered under the following guidelines *provided the conception occurs while covered under this Plan:*

A. If termination occurs before April 29, 1979, female employees and the spouses of employees are covered for the actual hospital charges up to $500 for that one pregnancy.

B. If termination occurs on or after April 29, 1979, the spouse of a male employee will be covered as explained in Part A above. However, in the case of a female employee who terminates on or after April 29, 1979, maternity benefits will be paid the same as any other hospital confinement for that one pregnancy.

44. What happens to my coverage if I am laid off due to lack of work?

Your coverage will terminate on the last day of the month following the month in which you are laid off. If you wish to continue your coverage beyond this period of time then you must convert to an individual policy in accordance with question 49.

45. What if I or one of my eligible dependents is "totally disabled" at the time my coverage terminates?

If coverage terminates for a "totally disabled" covered member the coverage for that disabled family member continues only for any expenses incurred during the uninterrupted period of that same disability for up to three months for the Basic Plan and one year for the Major Medical.

46. How does the Plan define "totally disabled"?

For an employee, the Plan defines "totally disabled" as preventing the employee from engaging in his regular or customary occupation and from performing work of any kind for compensation.

In the case of a dependent or retired employee, the Plan defines "totally disabled" as injury or disease that prevents engaging in substantially all of the normal activities of a person of like age and sex who is in good health.

47. What will happen to Plan coverage for my dependents if I should die?

Coverage for dependents terminates upon death of the employee. However, dependents have the right to con-

version in accordance with the "Conversion Privilege" discussed in question 48.

CONVERSION OF COVERAGE

48. What is the "Conversion Privilege"?

If coverage is discontinued because of termination of employment for any reason including layoff due to lack of work (refer to question 44) an employee may apply for an individual policy under certain conditions listed below.

A. The employee and any covered dependents who are under 65 years of age and not eligible for medicare.

B. The employee must have been covered for at least three months under the Hospitalization and Medical Surgical Plan with Newport News Shipbuilding.

49. How do I apply for conversion?

Contact the Health Claims Office immediately for the necessary form and procedures.

Note: Dependents whose coverage terminates because they no longer meet the eligibility requirements of questions 10 or 12 will be eligible to apply for conversion.

50. When do I apply for conversion?

Application for conversion to the individual policy and payment of the first premium must be made within 31 days following the date of termination or within 31 days following the last day of coverage as described in questions 43, 44, 45, 46, and 47.

51. Under what conditions would I be unable to convert to an individual policy?

Coverage cannot be converted if:

A. The employee or the covered dependent is over 65 years of age or eligible for Medicare.

B. The employee has been covered under Hospitalization and Medical-Surgical Plan with Newport News Shipbuilding for less than three months.

C. The individual policy is applied for in a jurisdiction in which the issuing insurance company is not authorized to issue or deliver the policy.

D. The Hospitalization and Medical-Surgical Plan terminates coverage with respect to the class of employees or dependents of which the individual is a member.

E. An individual applying for coverage has other health insurance.

EFFECT OF MEDICARE ON ACTIVE AND RETIRED EMPLOYEES

General Information

52. What is Medicare?

Medicare is a health insurance program run by the Federal Government for people 65 and older and some people under 65 who are disabled. Medicare is a two-part program broken down as follows:

1. Hospital Insurance (sometimes called Part A), and
2. Medicare Medical Insurance (sometimes called Part B).

The Active Employee And Medicare

53. Must I apply for Medicare if I am still an active employee?

Yes. Enrollment in Medicare Parts A and B (when you become eligible) *is essential* for you to maintain maximum coverage under the Hospital, Medical, Surgical Plan. ***The benefits payable under the Plan will be reduced by those benefits payable by Medicare whether you have Medicare coverage or not.***

54. Will benefits under the Plan be coordinated with Medicare when my spouse or myself becomes eligible for Medicare?

Yes. Benefits will be coordinated with Medicare once you or your spouse becomes eligible for Medicare coverage. Medicare will then provide primary coverage and the Plan will provide secondary coverage.

Note: For further information on Coordination of Benefits, see questions numbered 25 and 26.

The Retired Employee
And Medicare

55. What effect does Medicare have on Plan coverage for retired employees?

Plan coverage for a retired employee or eligible spouse terminates when the person becomes eligible for Medicare.

56. What type of coverage is available under the Hospitalization and Medical-Surgical Plan for a retired employee?

A retired employee, an eligible spouse of a retired employee, or a widow/widower who was an eligible spouse of a retired employee is eligible for basic benefits under the Hospitalization and Medical-Surgical Plan until each becomes eligible for Medicare. However, Major Medical benefits are not available.

57. Does the Basic Plan coverage for retired employees have a deductible?

Yes. The benefits provided under the Basic Plan are subject to a $25.00 deductible for each unrelated hospital confinement.

Note: Although this booklet describes the principal features of the Plan, it nevertheless is a summary of the Plan. The complete terms of the Plan are set forth in the Plan document. The Plan document is available for review upon request.

APPENDIX I

Newport News Shipbuilding

Hospitalization and Medical-Surgical Plan

Participating Companies as of February 17, 1975

Newport News Shipbuilding and Dry Dock Company
4101 Washington Avenue
Newport News, Virginia 23607

APPENDIX I

PUBLIC LAW 95-555

95th CONGRESS

AN ACT

To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 701 of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new subsection:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided,* That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.".

SEC. 2. (a) Except as provided in subsection (b), the amendment made by this Act shall be effective on the date of enactment.

(b) The provisions of the amendment made by the first section of this Act shall not apply to any fringe

benefit program or fund, or insurance program which is in effect on the date of enactment of this Act until 180 days after enactment of this Act.

SEC. 3. Until the expiration of a period of one year from the date of enactment of this Act or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act.

Approved October 31, 1978.